

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 2611 of 2005

Between:

N.Penchalaiah, S/o Chinnaiah,
Vengalrao Nagar, Nellore, Nellore District.

..... PETITIONER

AND

- 1 The Depot Manager, APSRTC, Nellore - II, Depot,
Nellore, Nellore District.
- 2 APSRTC, Rep. by Vice-Chairman and Managing Director,
Musheerabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or directions, more in the nature of Writ of Certiorari calling the records in Office Order No. E2/255(2)05-NLR-II dated 4-2-2005 on the file of 1st respondent herein and quash the same with all consequential benefits including reinstatement with continuity of service with full back wages and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.GOVINDA RAJULU

Counsel for the Respondent Nos.1 and 2: MR.R.MANMADHA REDDY

The Court at the admission stage made the following:

ORDER:

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Challenging the order No.E2/255(2) 05-NLR-II, dated 04.02.2005, issued by the 1st respondent, the present writ petition is filed.

The petitioner was selected as a Cleaner in the respondent Corporation, and after medical examination, his date of birth was fixed as 27.12.1947. But the 1st respondent has passed the impugned order, altering the date of birth of the petitioner.

The learned Counsel for the petitioner contended that as per the date of birth, mentioned in the Service Register, the petitioner has to retire from service on 30.12.2005, but the impugned order has been passed by the 1st respondent, without issuing any notice to the petitioner, and hence, he prays to set aside the impugned order.

On the other hand, the learned standing Counsel, appearing for the respondents, contended that since the date of birth of the petitioner was found to be 14.02.1947, he has to retire from service, as per Clause 1 (a) of the Regulation-6 of the A.P.S.R.T.C. Employees (Service) Regulations, 1964. Therefore, the impugned order does not suffer from any serious legal infirmities, so as to call for interference by this Court.

Admittedly, the date of birth of the petitioner was mentioned as 27.12.1947 in the service records, at the time of his initial appointment, after he was subjected to medical examination for fixing of his date of birth. If that is to be taken into consideration, the petitioner has to retire from service on attaining the age of

superannuation, on 30.12.2005. But the Depot Manager has passed the impugned order dated 04.02.2005, retiring the petitioner from service, on the premise that the date of birth of the petitioner is 14.02.1947.

Admittedly, no notice was given to the writ petitioner, so as to call for his explanation. Further more, under Regulation 19(3) of A.P.S.R.T.C. Employees (Service) Regulations, 1965, it is the Managing Director, who is competent to alter or correct the date of birth of an employee. In this writ petition, the Depot Manager has passed the impugned order, which suffers from jurisdictional error, and hence it has to be corrected.

Therefore, the impugned order, issued by the

1st respondent/Depot Manager, is without jurisdiction, and hence, the impugned order is quashed. However, this order will not preclude the competent authority to take appropriate decision, in accordance with law, after affording reasonable opportunity to the petitioner.

With the above observations, the Writ Petition is allowed. No order as to costs.

Dated: 14.03.2005

Dsr

ASSISTANT REGISTRAR

To:

1. The Depot Manager,
APSRTC, Nellore-II Depot,
Nellore, Nellore District

2. The Vice Chairman & Managing Director,
APSRTC, Musheerabad, Hyderabad

3. Two CD copies

*Form-NIC-OGS/*WP{**AVLR**}